

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF PERSONNEL**

**CHAPTER 1120-11  
GRIEVANCE**

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**1120-11-.01 PURPOSE.** To provide clear, orderly and expedient procedures through which all career or permanent employees of the State service may process bona fide complaints or grievances.

**Authority:** T.C.A. §8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2).  
Repeal and new rule filed November 18, 1987; effective January 2, 1988.

**1120-11-.02 POLICY.**

- (1) Career and permanent employees will be given every opportunity to resolve bona fide complaints or grievances through established procedures. Every reasonable effort will be made to resolve complaints at the lowest possible step in the procedure.
- (2) Employees using this procedure will be entitled to process their complaints or grievances without fear, interference, discrimination, or reprisal.

**Authority:** T.C.A. §8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2).  
Repeal and new rule filed November 18, 1987; effective January 2, 1988.

**1120-11-.03 RESPONSIBILITY.**

- (1) The Commissioner will be responsible for providing and maintaining the basic standards and guidelines for implementing this rule chapter.
- (2) Appointing authorities will be responsible for the proper effectuation of this rule chapter throughout their respective agencies. Modification of these procedures may be made in order to satisfy unusual circumstances within an agency if such modification is approved by the Commissioner.
- (3) Appointing authorities will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of this rule chapter.

**Authority:** T.C.A. §8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2).  
Repeal and new rule filed November 18, 1987; effective January 2, 1988.

**1120-11-.04 BASIC STANDARDS.**

- (1) A complaint or grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) workdays (Monday - Friday, 8:00 a.m. - 4:30 p.m.) of the action which is the basis for the grievance, otherwise it will be considered untimely and invalid.
- (2) Although no standard grievance forms are provided, agencies may develop and make available such forms to employees. No grievance may be denied because a standard form adopted by an agency has not been used.
- (3) A grievant may represent himself at any step in the procedure.
- (4) At the informal hearing before the appointing authority, an attorney or a representative of an employee may speak on behalf of the employee.
- (5) Legal counsel may represent a grievant before the Civil Service Commission, which is the final step of this procedure. The grievant and the agency may have counsel present at discussions prior to the final step. The presence of other observers at discussions prior to the final step of this procedure is at the discretion of the manager or supervisor in charge of that discussion.
- (6) Grievants may present grievances during business hours or other mutually agreeable hours as work situations may require. Grievance discussions held during the scheduled off-duty hours for a grievant, witness, or representative will be considered the same as overtime work. Grievants or employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.
- (7) Grievances concerning suspension without pay must be appealed to the lowest management level in the organization with authority to overturn the suspension.
- (8) Grievances concerning dismissal should be appealed directly to the appointing authority, warden, or superintendent.
- (9) Grievances concerning alleged discrimination prohibited by T.C.A. 8-50-103 or T.C.A. 4-21-401 may be appealed directly to the appointing authority, warden, or superintendent through this procedure. If the aggrieved is unsatisfied with the decision, the grievance and the appointing authority's response may be appealed to the Commission within thirty (30) days or the Tennessee Human Rights Commission as provided in T.C.A. 8-50-103(b).
- (10) Grievance decisions should be communicated in writing directly to the grievant in a timely manner as outlined in Chapter 1120-11-.05. Certified or registered mail is mandatory if a decision must be mailed. Hand delivered grievance decisions should include a written heading indicating "Hand Delivered" with a place for a signature.
- (11) Grievances must be expressed in reasonable terms. Each grievance submitted should contain:
  - (a) the basis for the grievance;
  - (b) the settlement or corrective action desired by grievant; and
  - (c) sufficient facts or other information to begin an investigation.

**Authority:** T.C.A. §8-30-328. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996.

**1120-11-.05 PROCEDURES.** The appropriate entrance step is determined by the grievant's relative level in the organization. Procedures shall not be more than five (5) steps to finality as follows:

- (1) Step I - Grievant's immediate Supervisor (verbal)
  - (a) Verbal discussion with supervisor within fifteen (15) workdays of cause.
  - (b) Supervisory investigation and fact finding.
  - (c) Decision clearly communicated to grievant within five (5) workdays of discussion.
- (2) Step II - Next Appropriate Higher Level of Management (written)
  - (a) Written grievance submitted to appropriate manager within ten (10) workdays of receipt of Step I decision.
  - (b) Informal discussion or hearing of facts and allegations.
  - (c) Investigation, fact finding, and written decision communicated to grievant within ten (10) workdays of discussion.
- (3) Step III - Next Appropriate Higher Level of Management (written)
  - (a) Written grievance and prior step decision submitted to next appropriate manager within ten (10) workdays of receipt of decision from Step II.
  - (b) Informal discussion or hearing of facts and allegations with witnesses and documentation.
  - (c) Investigation, fact finding, and written decision clearly communicated to grievant within ten (10) workdays of discussion.
- (4) Step IV (written)
  - (a) Written grievance and prior step decision submitted to the appointing authority or designee within ten (10) workdays of receipt of decision from Step III.
  - (b) Informal discussion or hearing of facts, allegations, and testimony by appropriate witnesses as determined by the appointing authority or designated representative as soon as practical. Whenever possible, the fourth step hearing shall be conducted by a manager who had no input to or involvement in the original decision to discipline.
  - (c) Investigation, fact finding, and written final agency decision communicated to grievant within ten (10) workdays of discussion.
  - (d) The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the step IV hearing including reinstatement of leave and awards of backpay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payment received.
- (5) Step V (Formal - Career Employee only)
  - (a) Written grievance and all relevant documentation shall be submitted within thirty (30) days of receipt of decision from Step IV to:

(Rule 1120-11-.05, continued)

Secretary, Civil Service Commission  
Tennessee Department of Personnel  
Second Floor, James K. Polk Building  
Nashville, TN 37243-0635

- (b) Hearings will be held pursuant to T.C.A. §8-30-328 and the Uniform Administrative Procedures Act.
- (6) The time limits set herein may be extended not in excess of six (6) months by written agreement between the manager involved and the employee. Failure of management to proceed within established time limits entitles the grievant to proceed to the next step in this procedure.
- (7) Hearings conducted at Step V will conform to the model rules of the Secretary of State for contested cases and the Department hereby adopts Secretary of State rule 1360-4-1 in statutory compliance.

**Authority:** T.C.A. §8-30-328 and T.C.A. §4-5-219. . **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994.

#### **1120-11-.06 SCOPE OF PROCEDURE.**

- (1) The Commission will serve as the final step for all grievances by career employees.
- (2) The agency appointing authority will serve as the final step for all grievances by permanent employees.

**Authority:** T.C.A. §8-30-328. . **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996.

#### **1120-11-.07 GRIEVABLE MATTERS.**

- (1) Disciplinary suspension or demotion.
- (2) Disciplinary dismissal.
- (3) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a 50 mile radius, centered on the previous official duty station.
- (4) Non-compliance with an approved reduction in force plan by an appointing authority.
- (5) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 ("The Little Hatch Act").
- (6) Coercion of an employee to "waive" his right to consideration on a certificate of eligibles.
- (7) Performance evaluations under certain circumstances to the fourth step.
- (8) Other matters within the discretion or control of the appointing authority or the Commission.

(Rule 1120-11-.07, continued)

**Authority:** T.C.A. §8-30-328. . **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996.

#### **1120-11-.08 EXCEPTIONS AND NON-GRIEVABLE MATTERS.**

- (1) Actions that affect employees who are not career or permanent employees.
- (2) Actions that affect an employee serving an initial probationary period.
- (3) Normal supervisory counseling.
- (4) Non-selection for promotion when the appointment was in compliance with these rules and the Act.
- (5) Verbal and written reprimands.
- (6) Performance award decisions.
- (7) Actions resulting from suggestions adopted by the State Employee Suggestion Award Board.
- (8) Actions resulting from reductions in force when an approved reduction in force plan was followed.
- (9) Shift, post, and overtime assignments.
- (10) Reasonable work assignments outside those normally associated with the employee's assigned job classification.
- (11) Salary range assigned to classification.
- (12) Classification of position.
- (13) Denial of leave requests except as provided for in T.C.A. §§8-50-801 and T.C.A. 8-50-110.
- (14) Matters relating to internal agency or program management which are based on discretionary decision making.
- (15) Demotions during subsequent probation, if such demotion is to the job classification from which the employee was promoted and at a salary rate no lower than the salary rate had the promotion not occurred.
- (16) Agency rules or policies which do not conflict with statutes or rules of the Department of Personnel.
- (17) Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.

**Authority:** T.C.A. 8-30-328. . **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994

**1120-11-.09 TECHNICAL ADVICE AND ASSISTANCE.**

- (1) Technical questions regarding this rule may be resolved by referring questions to the agency personnel section.
- (2) Unresolved technical questions to an agency personnel section may be resolved by referring such to the Department of Personnel, Employee Relations Division.
- (3) Disputes over grievability may be resolved by an agency's appointing authority or by the Commissioner. The Civil Service Commission may review such determinations and, at its discretion, take whatever action it deems appropriate.
- (4) The intent of this policy is to legally, efficiently, and fairly resolve bona fide complaints, and grievances. The initiation of a grievance should not be considered as a negative reflection against an employee, supervisor, or agency management, but should be considered as an effort to communicate and seek resolution of work related problems.
- (5) Management should consider grievances objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude throughout the process of redress.

**Authority:** T.C.A. § 8-30-328. . **Administrative History:** (For history prior to January 2, 1988, see pages 1-2).  
*Repeal and new rule filed November 18, 1987; effective January 2, 1988*

## SAMPLE LETTERS TIP SHEET

### Recommendation for Disciplinary Action for Career Employees

- State the type discipline recommended (suspension, demotion, dismissal).
- Detail the times, places and other pertinent facts concerning the performance or conduct issue(s). Include applicable training provided, supervisory counseling, performance evaluations, other discipline related to the issue(s), etc.
- Provide an offer of due process (pre-decision meeting). Include a deadline for requesting a due process hearing with a name and contact information for a person to set up the hearing or include the name of the manager and contact information for the individual that will conduct the hearing with the date, time and location.

### Disciplinary Letters

- State the specific discipline imposed, e.g., date(s) of suspension, demotion from and to a classification, dismissal.
- Provide applicable T.C.A. section(s), Rules of the Department of Personnel, and/or any internal agency rules or policies that are the basis for the recommended discipline.
- Detail the times, places and other pertinent facts concerning the performance or conduct issue(s). Include applicable training provided, supervisory counseling, performance evaluations, other discipline related to this issue, etc. When dismissing for gross misconduct, clearly describe the job-related misconduct and provide T.C.A. section(s) under which the employee may be criminally prosecuted.
- State whether the employee declined or accepted the offer of due process. If accepted, include the date and person that conducted the pre-determination meeting with the resulting recommendation. **(A waiver of due process does not negate the employee's right to grieve the disciplinary action.)**
- State the employee's 4<sup>th</sup> step grievance rights to appeal by filing a written request to the appointing authority within 15 workdays from notification of the discipline letter. Provide the name and number of an agency contact for questions (usually the Human Resources Office). You may also include the number for the Department of Human Resources' Employee Relations Division.

### 4<sup>th</sup> Step Decision Letters

- State the name of the person who conducted the hearing (appointing authority or the designee) and the date of the hearing.
- State the specific discipline issued (suspension, demotion, dismissal) and provide applicable T.C.A. section(s), Rules of the Department of Personnel, and/or any internal agency rules or policies.

- Include the basis for the decision by either attaching the original discipline letter, the recommendation from the 4<sup>th</sup> step hearing, internal investigation reports, etc., or by detailing the basis in full as stated in the original discipline letter.
- If the appointing authority conducted the 4<sup>th</sup> step hearing, state the final decision. If a designee conducted the 4<sup>th</sup> step hearing, state the designee's recommendation and the appointing authority's final decision.
- State the employee's 5<sup>th</sup> step grievance rights to appeal by filing a written request to the Civil Service Commission within 30 calendar days from notification of the 4<sup>th</sup> step grievance decision. Provide the name and number of an agency contact for questions (usually the Human Resources Office). You may also include the number for the Department of Human Resources' Employee Relations Division.



**SAMPLE LETTER – ORAL WARNING\***  
**Letter or Memorandum**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Written Follow-up of an Oral Warning

This is a memorandum of understanding following the oral warning you received on [DATE] as a result of your [STATE PERFORMANCE OR CONDUCT ISSUES DISCUSSED WITH THE EMPLOYEE].

[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES.]

[INCLUDE ANY EXPECTATIONS, CORRECTIVE ACTION, IMPROVEMENT PLANS AND/OR TIMEFRAMES FOR IMPROVEMENT DISCUSSED WITH THE EMPLOYEE.]

I am confident that you can correct these issues addressed above and there will be no further problems in the future. Failure to correct this problem may lead to further disciplinary action. Please let me know if you have any questions.

\*Written follow-up to an oral warning discussion is not required but helps document the issues discussed, the expectations of the supervisor, and the consequences of continued unacceptable performance or conduct. Written follow-up to an oral warning should not be construed as a written warning as described in the Rules of the Department of Personnel, Chapter 1120-10-.07(3) and will not become part of the employee's official personnel file.

**SAMPLE LETTER – WRITTEN WARNING\***

**Memorandum**

**From the Appropriate Supervisor/Manager  
Hand Delivered**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Written Warning

This memorandum serves as a written warning. I am issuing this written warning as a result of your [STATE PERFORMANCE OR CONDUCT ISSUES].

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**[INCLUDE ANY EXPECTATIONS, CORRECTIVE ACTION, IMPROVEMENT PLANS AND/OR TIMEFRAMES FOR IMPROVEMENT DISCUSSED WITH THE EMPLOYEE.]**

This written warning will be placed in your official personnel file. If there is no further disciplinary actions with respect to the same area of [PERFORMANCE OR CONDUCT] within the next two (2) years, this written warning will be removed from your file.

Written warnings are non-grievable under the Rules of the Department of Personnel, Chapter 1120-11-.080(5). However, you may request a review of this written warning by [APPOINTING AUTHORITY'S NAME] within 30 days from receipt of this warning. Your written request for review should include documentation of any reasons why you believe this written warning is unwarranted. You may find additional information regarding the review of written warnings at <http://www.state.tn.us/sos/rules/1120/1120-12.pdf>.

You are to correct the issues addressed in this written warning and I expect no further problems in these areas in the future. Failure to correct these problems may lead to further disciplinary action, up to and including dismissal. Please let me know if you have any questions.

**cc: [Agency Human Resources Office]**

\*A copy of the written warning may be placed in the employee's official personnel file at the discretion of the appointing authority. Any written warning issued to an employee shall be automatically expunged from the employee's personnel file after a period of two (2) years from the date of the letter if there is no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

**SAMPLE LETTER – RECOMMENDATION FOR SUSPENSION**

**Memorandum or Letter Style  
From the Appropriate Supervisor/Manager  
Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Recommendation for Suspension

This is to inform you of my intent to recommend your suspension without pay for [NUMBER] workday(s).

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, individuals with knowledge of this [SITUATION/PERFORMANCE PROBLEM/CONDUCT ISSUE] will present relevant information concerning this recommendation. You may present information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME] with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, I will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

Please let me know if you have any questions.

NOTE: An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

**SAMPLE LETTER – RECOMMENDATION FOR DEMOTION**

**Memorandum or Letter Style  
From the Appropriate Supervisor/Manager  
Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Recommendation for Demotion

This is to inform you of my intent to recommend your demotion from your classification of [CURRENT CLASSIFICATION] with this department.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, individuals with knowledge of this [SITUATION/PERFORMANCE PROBLEM/CONDUCT ISSUE] will present relevant information concerning this recommendation. You may present information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME] with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, I will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

Please let me know if you have any questions.

NOTE: An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

**SAMPLE LETTER – RECOMMENDATION FOR DISMISSAL**  
**Memorandum or Letter Style**  
**From the Appropriate Supervisor/Manager**  
**Hand Delivered or Certified Mail**

**TO:** [EMPLOYEE]

**FROM:** [APPROPRIATE SUPERVISOR/MANAGER]

**DATE:**

**SUBJECT:** Recommendation for Dismissal

This is to inform you of my intent to recommend your dismissal from your position of [CURRENT CLASSIFICATION] with this department.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUE(S). INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THE ISSUE(S), ETC.]**

You may request a due process hearing prior to submission of this recommendation to [APPOINTING AUTHORITY]. At a due process hearing, individuals with knowledge of this [SITUATION/PERFORMANCE PROBLEM/CONDUCT ISSUE] will present relevant information concerning this recommendation. You may present information to refute the allegations against you. After consideration of all pertinent facts, the manager conducting the due process hearing will submit a recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 1**

If you wish to schedule a due process hearing, please contact [NAME/CONTACT INFORMATION] within 2 workdays from the receipt of this memorandum. If [NAME] has not heard from you in 2 workdays, we will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

**OPTION 2**

A due process hearing is scheduled for [DATE, PLACE, AND TIME] with [NAME OF THE MANAGER CONDUCTING THE HEARING]. If you fail to contact [MANAGER/OTHER APPROPRIATE CONTACT] prior to this date or fail to appear at this scheduled hearing, I will consider that you have waived your right to due process. I will then forward this recommendation to [APPOINTING AUTHORITY] for a decision.

Please let me know if you have any questions.

NOTE: An employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision. Five working days is a good rule of thumb, but circumstances might require a longer or shorter period.

**SAMPLE LETTER – SUSPENSION LETTER**  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

**DATE**

**EMPLOYEE’S NAME**  
**ADDRESS**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of your suspension without pay for **[NUMBER]** workday(s). You will serve this suspension on **[PROVIDE SUSPENSION DATES\*]**.

My decision to suspend you is on the basis of your **[PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES]**

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**OPTION 1**

You received a recommendation for suspension from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to suspend you is on the basis of the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for suspension from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to suspend you is on the basis of the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*To receive holiday pay, an employee must work or be on paid leave the major portion of the workday prior to a holiday. A suspension without pay prior to a holiday will result in additional day(s) without pay.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DEMOTION LETTER**  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

**DATE**

**EMPLOYEE’S NAME**  
**ADDRESS**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of your demotion from your current classification of **[PRESENT CLASS TITLE]** to the classification of **[LOWER CLASS TITLE]** effective **[DATE]** and at a salary of **[NEW SALARY BASED ON DEMOTION POLICY]** per month.

My decision to demote you is on the basis of **[PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES]**.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**OPTION 1**

You received a recommendation for demotion from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to demote you is on the basis of the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for demotion from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to demote you is on the basis of the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.



As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process to **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DISMISSAL LETTER**  
**Rehire Recommendation No for this Agency\***  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

**DATE**

**EMPLOYEE'S NAME**  
**ADDRESS**

Dear **[EMPLOYEE'S NAME]**:

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** effective 10 calendar days from receipt of this letter.

My decision to dismiss you is on the basis of **[PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES]**.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 98-029.

Sample Dismissal Letter – Rehire Recommendation No for this Agency  
Page 2

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. In addition, you will receive a lump sum payment for any annual or compensatory leave to your credit. I am not recommending you for rehire with **[NAME OF DEPARTMENT OR AGENCY]**. The recommendation applies only to this **[DEPARTMENT OR AGENCY]** and does not preclude any other state agency from considering or hiring you.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DISMISSAL LETTER FOR GROSS MISCONDUCT**  
**Rehire Recommendation No for State Government\***  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or Other Mail Tracking System**

**DATE**

**EMPLOYEE'S NAME**  
**ADDRESS**

Dear **[EMPLOYEE'S NAME]**:

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** for gross misconduct effective 10 calendar days from receipt of this notice.

My decision to dismiss you is on the basis of your **[DESCRIBE JOB-RELATED MISCONDUCT AND PROVIDE T.C.A. SECTION(S) UNDER WHICH THE EMPLOYEE MAY BE CRIMINALLY PROSECUTED. ALSO, PROVIDE OTHER APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES]**.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*A rehire recommendation for that agency is at the discretion of the appointing authority. To recommend no rehire with state government, the termination must be for job-related misconduct for which the employee may be criminally prosecuted. See Department of Human Resources Policy 98-029.

Sample Dismissal Letter – Gross Misconduct – Rehire Recommendation No for State  
Government  
Page 2

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. As this dismissal is for gross misconduct, any annual leave to your credit will be used during this 10 calendar day paid notice. Pursuant to Tennessee Code Annotated Section 8-50-807(d), and Rules of the Department of Personnel, Chapter 1120-6-.24, you are not eligible to collect any remaining annual leave balance. You will receive a lump sum payment for any compensatory leave to your credit.

Due to the seriousness of this situation, I am not recommending you for rehire with the State of Tennessee. This recommendation will result in your name being removed from all civil service registers for a period of two years from the date of this separation. After this two year period and upon reapplication with the state, no state agency will be required to notify or interview you for any state job.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – DISMISSAL LETTER**  
**Rehire Recommendation Yes for State Government\***  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

**DATE**

**EMPLOYEE'S NAME**  
**ADDRESS**

Dear **[EMPLOYEE'S NAME]**:

This is to inform you of your dismissal from the **[DEPARTMENT OR AGENCY NAME]** effective 10 calendar days from receipt of this letter.

My decision to dismiss you is on the basis of **[PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES]**.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC.]**

**OPTION 1**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER THAT MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you requested a due process hearing, **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS]** conducted a hearing on **[DATE]** and forwarded a recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendations of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and **[NAME OF MANAGER WHO CONDUCTED THE DUE PROCESS HEARING]**, a review of the information presented, and a review of your personnel file.

**OPTION 2**

You received a recommendation for dismissal from **[NAME OF SUPERVISOR OR MANAGER WHO MADE THE RECOMMENDATION]** on **[DATE]** with an offer of due process. As you did not request a due process hearing, **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** forwarded the recommendation to me for a decision. Therefore, my decision to dismiss you is on the basis of the recommendation of **[NAME OF RECOMMENDING SUPERVISOR/MANAGER]** and a review of your personnel file.

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 98-029.

Sample Dismissal Letter – Rehire Recommendation Yes for State Government  
Page 2

You will receive a 10 calendar day paid notice prior to the effective date of dismissal and will receive pay for the workdays that fall within that 10 calendar day period. In addition, you will receive a lump sum payment for any annual or compensatory leave to your credit. Due to the circumstances surrounding this dismissal, I am recommending you for rehire with **[NAME OF DEPARTMENT OR AGENCY]**.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

**SAMPLE LETTER – JOB ABANDONMENT**  
**Memorandum or Letter Style**  
**From the Agency Appointing Authority**  
**Hand Delivered, Certified Mail, or other Mail Tracking System**

**DATE**

**EMPLOYEE’S NAME**  
**ADDRESS**

Dear **[EMPLOYEE’S NAME]**:

This is to inform you of your separation from the **[DEPARTMENT OR AGENCY NAME]** effective **[DATE]** for job abandonment.

Tennessee Code Annotated Section 8-30-326(c) states, “Any employee who is absent from duty for more than three (3) consecutive work days without giving notice to the appointing authority or appropriate manager to include the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor, or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent existing circumstances causing the employee's absence or preventing the employee's return. A regular employee who is designated resigned in accordance with these circumstances shall have the right to appeal such action through the grievance procedure and to be reviewed by the commission.”

**[DETAIL THE PERTINENT FACTS CONCERNING THE CIRCUMSTANCES THAT RESULTED IN THE SEPARATION FOR JOB ABANDONMENT. INCLUDE ANY INFORMATION PROVIDED TO THE EMPLOYEE REGARDING LEAVE REQUESTS AND APPROVAL, CONTACTING THE SUPERVISOR WHEN ABSENT, ETC.]**

Based on the information outlined above, we consider you as having resigned not in good standing from your position with this department. You will receive a lump sum payment for any annual or compensatory leave to your credit. I am not recommending you for rehire with **[NAME OF DEPARTMENT OR AGENCY\*]**. The recommendation applies only to this **[DEPARTMENT OR AGENCY]** and does not preclude any other state agency from considering or hiring you.

As a career employee, you may appeal this decision by filing a grievance within 15 workdays from receipt of this letter. You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY’S APPOINTING AUTHORITY]**

cc: Commissioner, Department of Human Resources

\*A rehire recommendation for a specific agency is at the discretion of the appointing authority. See Department of Human Resources Policy 98-029.



**SAMPLE LETTER – APPOINTING AUTHORITY’S 4<sup>th</sup> STEP DECISION\***

**Memorandum or Letter Style  
From the Agency Appointing Authority  
Certified Mail**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DATE**

**EMPLOYEE’S NAME  
ADDRESS**

Dear [EMPLOYEE’S NAME]:

This is to inform you of my decision regarding your fourth step grievance hearing concerning your [SUSPENSION, DEMOTION, DISMISSAL].

Upon your request, my designee, [NAME] conducted a fourth step grievance hearing with you on [DATE]. Your supervisor, [NAME], outlined the circumstances which led to your [SUSPENSION, DEMOTION, OR DISMISSAL]. In addition, you provided information regarding reasons why you felt this action was unwarranted.

**OPTION 1**

After careful review of all the information presented at the grievance hearing, [DESIGNEE’S NAME] concurred with the decision to [SUSPEND, DEMOTE, DISMISS] you and forwarded a recommendation to me for a final decision. Based on a review of the attached information [ATTACH THE ORIGINAL DISCIPLINARY LETTER, THE RECOMMENDATION LETTER FROM THE 4<sup>TH</sup> STEP HEARING, INTERNAL INVESTIGATION REPORT, ETC.] and a review of your personnel file, I uphold my original decision to [SUSPEND, DEMOTE, OR DISMISS] you on the basis of [PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES FROM THE DISCIPLINARY LETTER].

**OPTION 2**

After careful review of all the information presented, [DESIGNEE’S NAME] concurred with the decision to [SUSPEND, DEMOTE, DISMISS] you and forwarded a recommendation to me for a final decision. Based on a review of the information from the hearing, documentation of the disciplinary action, and a review of your personnel file, I uphold my original decision to [SUSPEND, DEMOTE, OR DISMISS] you on the basis of [PROVIDE APPLICABLE T.C.A. SECTION(S)/RULES OF THE DEPARTMENT OF PERSONNEL/INTERNAL AGENCY RULES OR POLICIES].

\*Rules of the Department of Personnel, Chapter 1120-11-.05(4)(d) states, “The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the step IV hearing including reinstatement of leave and awards of backpay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payment received.”

The 4<sup>th</sup> step decision letter must contain 5<sup>th</sup> step grievance rights when the 4<sup>th</sup> step grievance decision to alter a disciplinary action results in a continued loss of a property right, e.g., dismissal to a suspension, 5 day suspension to a 1 day suspension.

**[DETAIL THE TIMES, PLACES AND OTHER PERTINENT FACTS CONCERNING THE PERFORMANCE OR CONDUCT ISSUES. INCLUDE APPLICABLE TRAINING PROVIDED, SUPERVISORY COUNSELING, PERFORMANCE EVALUATIONS, OTHER DISCIPLINE RELATED TO THIS ISSUE, ETC. FROM THE DISCIPLINARY LETTER.]**

If you wish to appeal the decision, you have 30 calendar days from receipt of this letter to file a written grievance with the Civil Service Commission at the following address: Secretary, Civil Service Commission, Department of Human Resources, First Floor, James K. Polk Building, Nashville, Tennessee, 37243.

You may direct questions regarding the grievance process by contacting **[AGENCY HR DIRECTOR OR EMPLOYEE RELATIONS OFFICER AND TELEPHONE NUMBER]** or the Employee Relations Division of the Department of Human Resources at 615-741-1646. Additionally, the Rules of the Department of Personnel regarding the grievance procedure are located at <http://www.state.tn.us/sos/rules/1120/1120-11.pdf>.

Sincerely,

**[AGENCY APPOINTING AUTHORITY]**

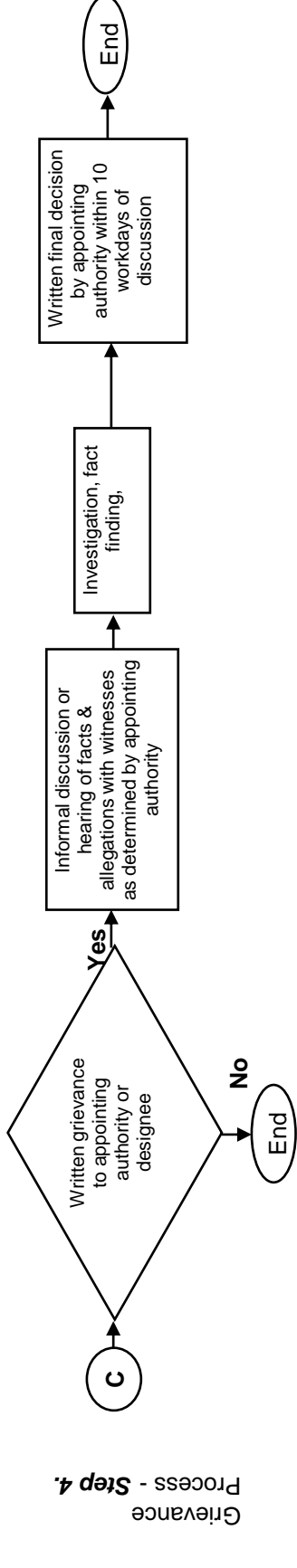
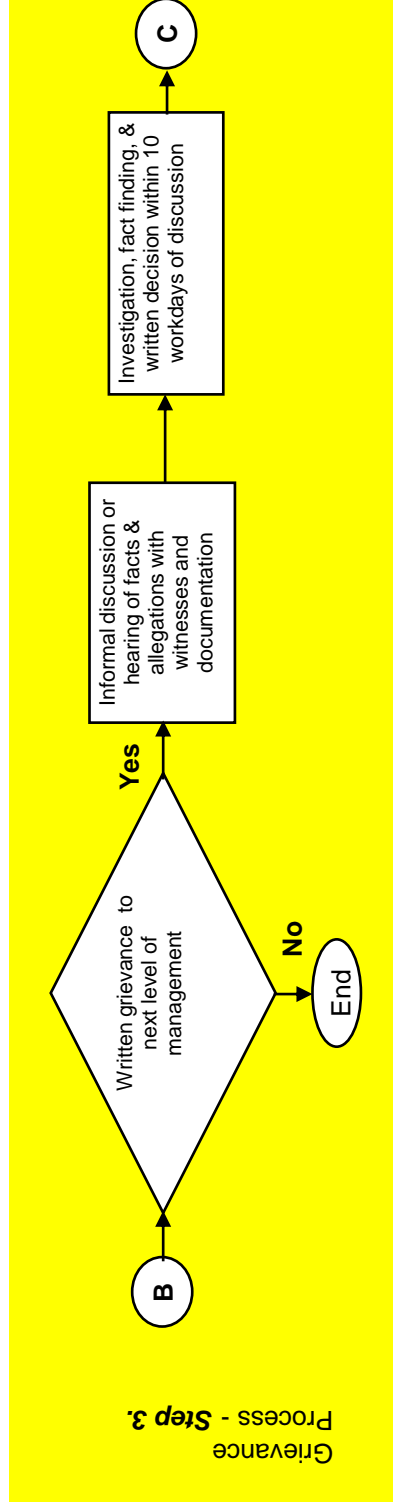
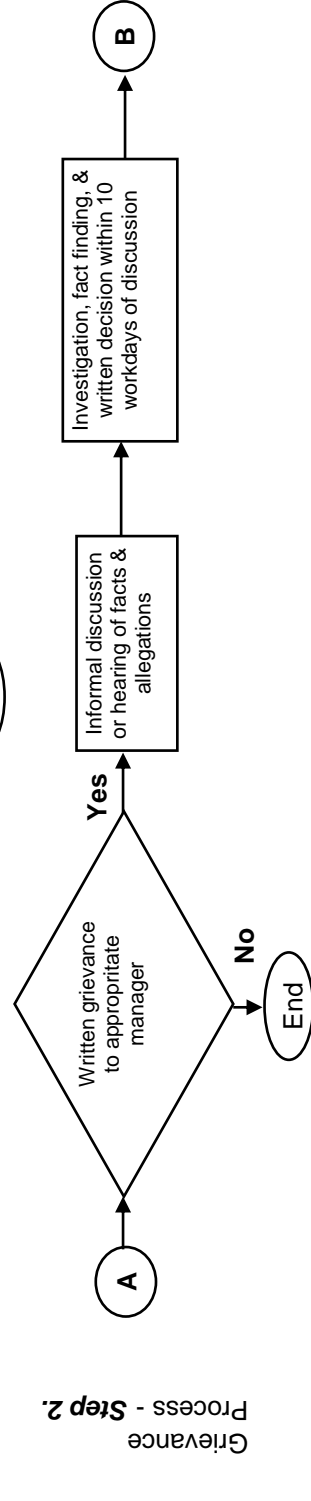
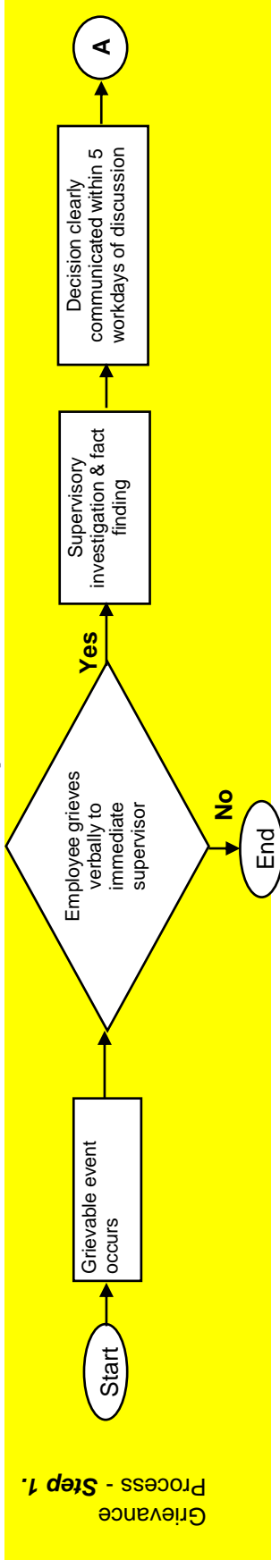
Attachments

cc: Commissioner, Department of Human Resources

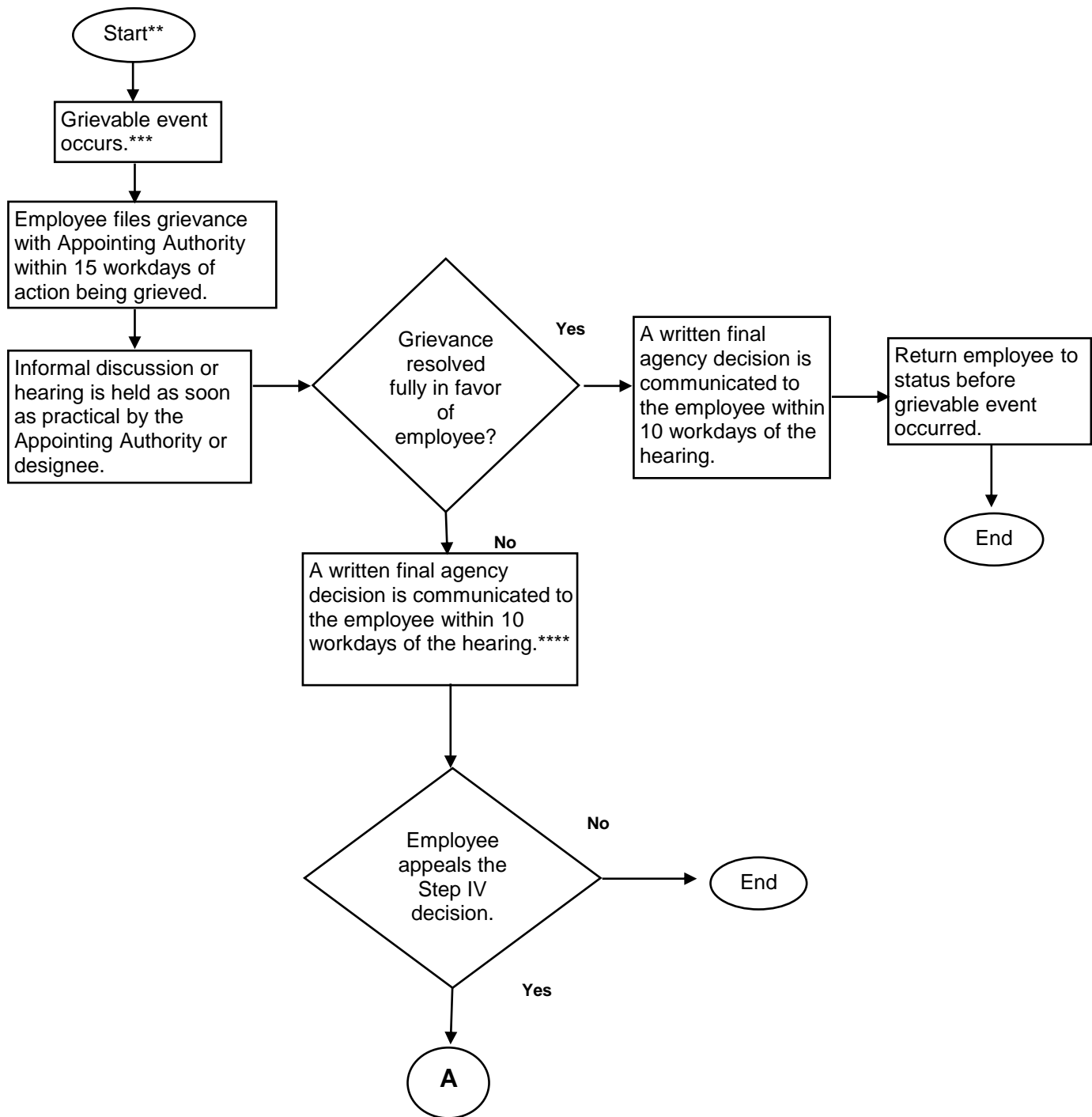
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[illegible]

## Grievance Process Steps 1-4



## Grievance Process\* - Level IV



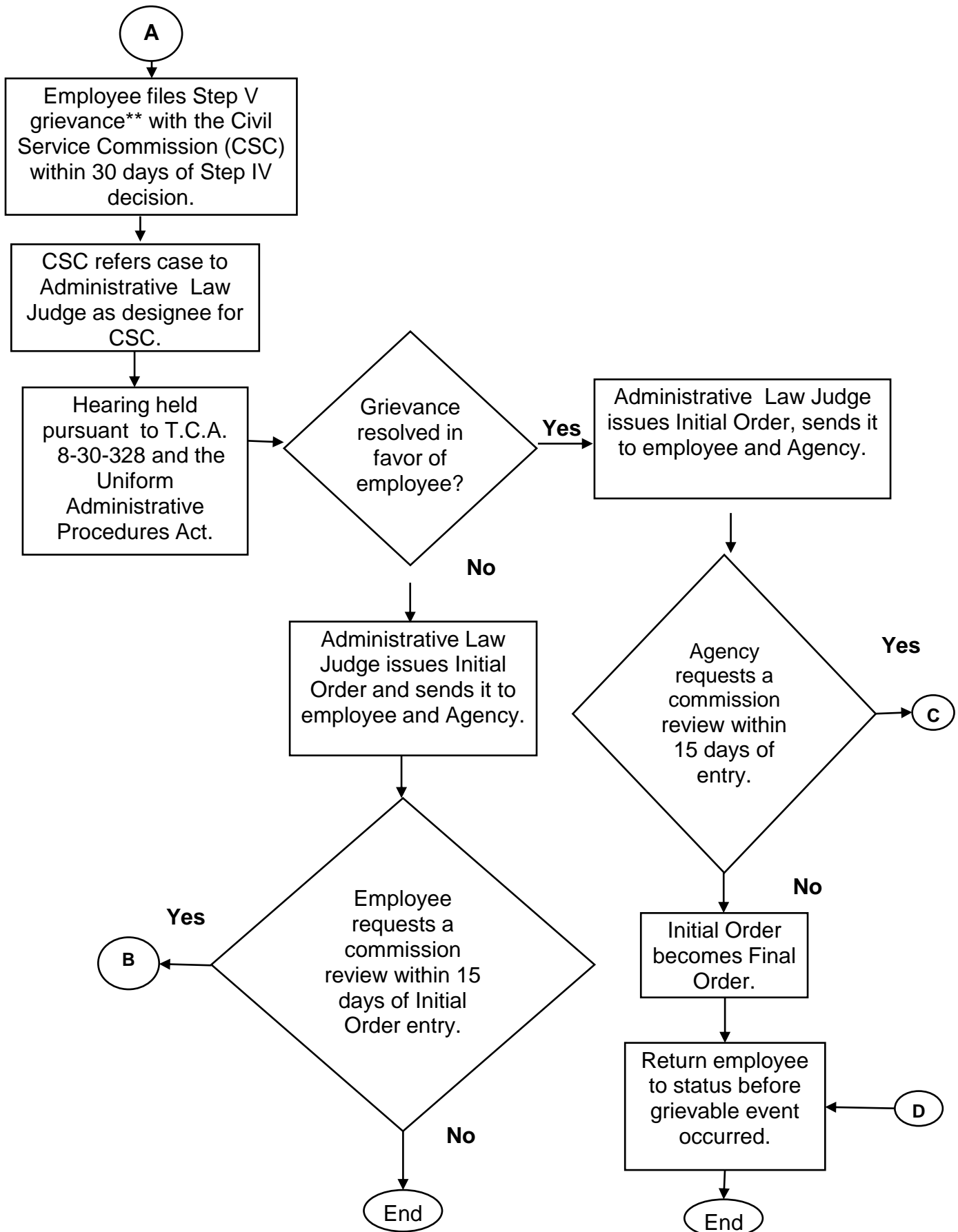
\*The above flowchart represents a grievance involving a property right (e.g. suspension, demotion, dismissal).

\*\*You may view the Grievance Procedure Chapter of the Rules of the Department of Personnel at [www.state.tn.us/sos/rules/1120/1120-11.pdf](http://www.state.tn.us/sos/rules/1120/1120-11.pdf).

\*\*\*The Grievance Procedure involves five (5) steps. It begins with the first step which is the first level supervisor and it goes up through the chain of command. However, if a career employee is suspended, demoted, or dismissed, he/she may enter the Grievance Procedure at the fourth step, which is always the appointing authority.

\*\*\*\*Written notice includes appeal rights of the employee.

## Grievance Process\* - Level V (Administrative Law Judge)

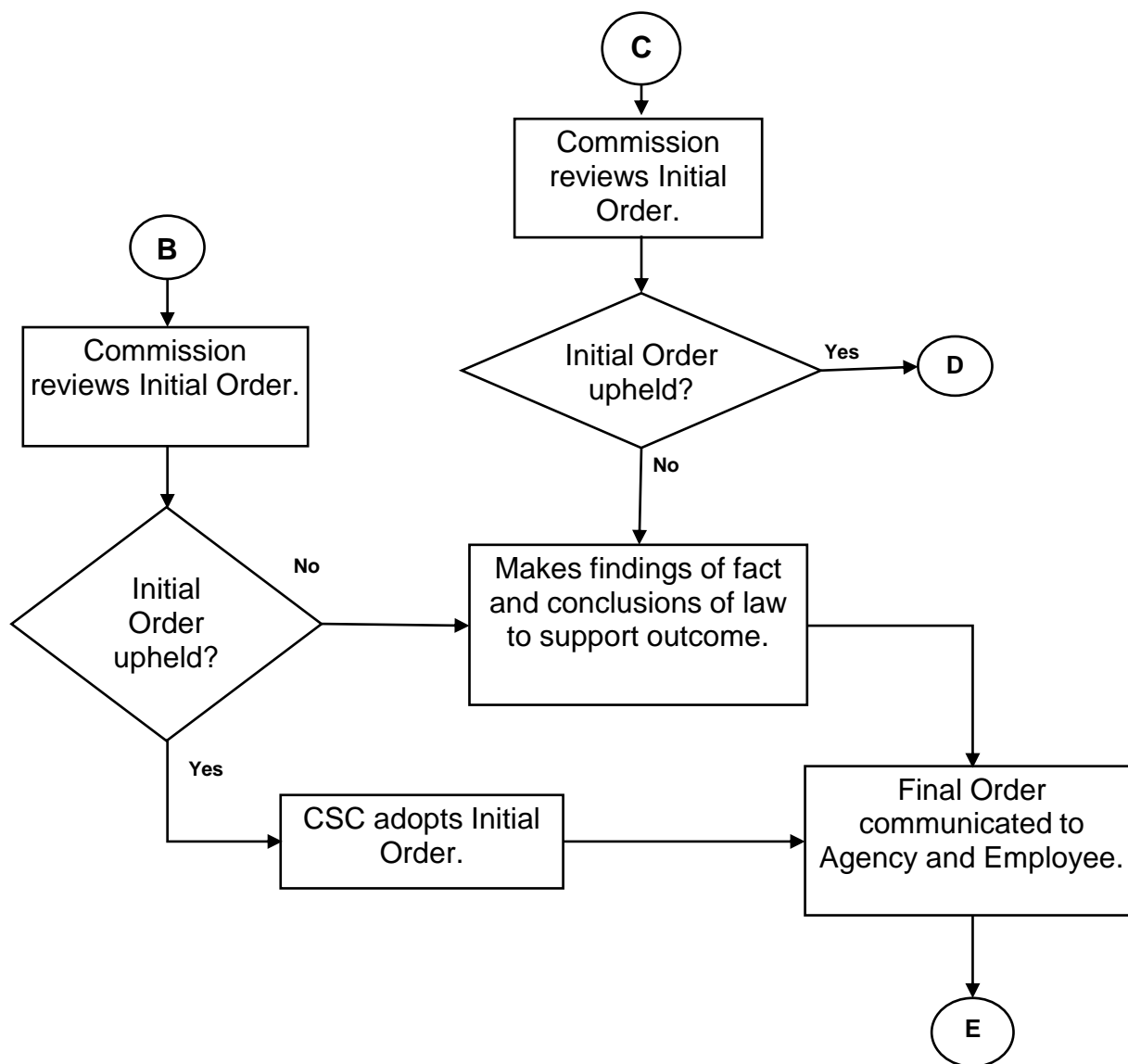


\*You may view the Grievance Procedure Chapter of the Rules of the Department of Personnel at [www.state.tn.us/sos/rules/1120/1120-11.pdf](http://www.state.tn.us/sos/rules/1120/1120-11.pdf).

\*\*Employee files a written grievance on Level IV decision and all relevant documentation with the Secretary, Civil Service Commission.

## Grievance Process\* - Level V (CSC)

*This Flowchart is a continuation of the Grievance Process and is linked to Step IV (ALJ).*

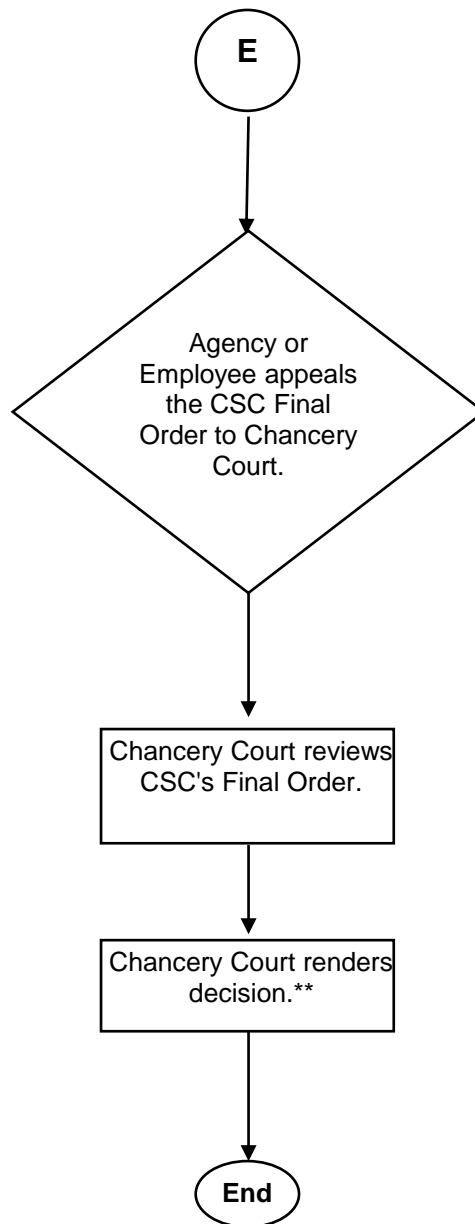


\*You may view the Grievance Procedure Chapter of the Rules of the Department of Personnel at [www.state.tn.us/sos/rules/1120/1120-11.pdf](http://www.state.tn.us/sos/rules/1120/1120-11.pdf).



## Grievance Process\* - Chancery Review

*This Flowchart is a continuation of the Grievance Process and is linked to Step V.*



\*You may view the Grievance Procedure Chapter of the Rules of the Department of Personnel at [www.state.tn.us/sos/rules/1120/1120-11.pdf](http://www.state.tn.us/sos/rules/1120/1120-11.pdf).

\*\*Further appellate review is available.

## **Grievance Process (Level 1-4)**

March 28, 2008

The listed handouts have been used for training in the Tennessee Department of Mental Health and Developmental Disabilities. Other departments may need to modify any or all to suit their organizational structures or managerial values.

- I. Hints on Preparing for Disciplinary Actions**
- II. Hints on Preparing for Grievance Presentation**
- III. Points to Ponder—Disciplinary/Grievance Actions**

## I. Hints on Preparing for Disciplinary Actions for HR Directors

### A. Most Important!!

1. Never approach a disciplinary action as a routine function. Make each one a special project requiring your personal attention.
2. Do your homework BEFORE writing the letter of intent to take disciplinary action (or other “property-taking” action.)
3. Lead the supervisor or manager through the process to assess proper charge(s); advise them on reasonable sanctions; **diffuse the situation, if necessary.**
4. Require PROOF of what the employee did or didn’t do:
  - a. Testimony—First-hand knowledge is generally credible.
  - b. Documentary Evidence—Timesheets, logs, unit notes, computer records, etc.
  - c. Witnesses—get written statements as soon as possible.

**Note: Guard against language in letters that imply misconduct or inadequate performance if that is not the focus of the case.**

5. DON’T RELY ON POLICIES NOT UNIFORMLY ENFORCED!!
6. Brief your attorney before presenting a letter of intent to the employee.

### B. Best Check: Make the other side’s case.

1. Attack your own case as though you’re trying to kill it!
2. Identify every weakness you can find.
3. BACK OFF IF YOU DON’T HAVE A CASE!!!!

## II. Hints on Preparing for Grievance Presentation for HR Directors and Grievance Presenters

### A. Prepare a written presentation plan.

Use the old training devise in the organization plan:

1. Tell the hearing officer what you're going to tell him/her.
2. Tell him/her, with appropriate testimony and documentation.
3. Following the grievant's presentation, and in closing, tell him/her what you've demonstrated.

### B. Base your presentation on the letter of intent and the decision letter.

### C. Make an outline of your expected presentation. Be careful not to confuse conclusions with proof!

1. **List charges separately.** Be prepared to demonstrate how the action/inaction is an offense worthy of disciplinary action.
2. **List the specific points you plan to prove.** Under each point, list the witnesses and documentary evidence you plan to submit, including any policies relevant to the charges, and witness statements, or other records, such as logs, assignment sheets, attendance records, prior disciplinary records (relevant written warnings, prior suspensions, etc.)
3. **Summarize on your plan what you expect from your witnesses.** (You should have gone over the testimony BEFORE the hearing so you'll not have any surprises, but insist the witnesses tell the truth about their knowledge or involvement in the case.) Have any documentation related to their testimony ready to submit as the testimony is given.
4. **Make three copies of every piece of documentary evidence and witness statements.** Have them organized to follow your presentation. As you submit the evidence, give one copy to the hearing officer and one copy to the grievant or the grievant's representative.
5. **Have that documentation ready for presentation if needed.** Since you've already anticipated any weakness in your case, you should already have explanatory documentation to counter those weaknesses. Have it organized with three copies, as above. (If you haven't prepared for weaknesses in your case, or have no answers for those, maybe you shouldn't be here anyway!)

### **III. Points to Ponder—Disciplinary Actions and Grievance Hearings**

(For any contemplated employee disciplinary action, please consider the following general thoughts and guidelines.)

- A. Presume that all disciplinary actions will be appealed.
  - 1. Make the other side's case.
  - 2. Look for any possible weaknesses in your own case.
  - 3. Anticipate what the other side will try to do to your case.
- B. Keep anger and frustration out of your deliberations and out of your decisions.
- C. In ALL cases, look for management/supervisory glitches, failures, or simple gaps that could have contributed to the events you're dealing with.
- D. When relying on policies or procedures as the guideline for the action you contemplate, ensure three things:
  - 1. Policies and procedures have been announced/distributed
  - 2. Review whether it has been used haphazardly
  - 3. Make sure there is a record of applying policy uniformly.

\*Remember that it is better to not have a policy than to have one you don't follow. Your "real" policy is what you do—not what you say you do or should do. If you can't rigorously follow your own policy, GET RID OF IT.
- E. Find ways to actively demonstrate that you've tried to help the employee succeed.
  - 1. Positive steps, at least on the front end, work best, both from the perspective of improving performance AND from the perspective of justifying subsequent negative sanctions.
- F. Be careful with Performance Evaluations.
  - 1. Don't try to charge someone for incompetence or poor job performance if they've got 3s, 4s, or 5s on an official PE.

G. Rifle Shot or Kitchen Sink

1. You may feel that you are more likely to win support for your action if you can point to multiple offenses. In some cases that is true, but there are great dangers in that approach.
2. The level and quality of proof you need does not lessen as you add more charges. It's easy to fool yourself that you've got a case if you rely on quantity rather than quality.
3. If there is any loose thread in your case, it will come unraveled, and all the other things you have "proved" will be forgotten!

H. Don't try to hide weaknesses in your case from the hearing officer.

1. Step III and Step IV are times to make the best efforts to determine the right thing to do. These are not formal hearings where the department has made a determination it wants to "win."
2. You can lose your credibility in a hurry by trying to hide things or make them out to be something they're not.
3. When the case hinges on conflicting testimony or evidence, your credibility can make or break your case.

[illegible]

[illegible]



**LEVEL V HEARINGS BEFORE THE  
TENNESSEE CIVIL SERVICE COMMISSION**

Thomas G. Stovall, Director  
Chief Administrative Judge  
Administrative Procedures Division

**I. IMPORTANCE OF CIVIL SERVICE COMMISSION CASES**

- A. Job security for career state employee
- B. Cases can be as difficult as any cases tried by ALJs
  - 1. Difficult facts--who is telling truth?
  - 2. Emotional
  - 3. Difficult social issues: discrimination, sexual harassment, ADA
- C. Volume: 120 filed in APD in 2007

**II. PROCEDURE UPON REFERRAL TO APD**

- A. Civil Service Commission referral to APD
- B. ALJ assigned
- C. ALJ contact with parties (mediation offered)
- D. Hearing scheduled and conducted
- E. Initial Order may be reviewed by Civil Service Commission

**III. MEDIATION**

- A. Informal
- B. Opportunity to fashion outcome acceptable to all involved
- C. Take seriously and approach with open mind
- D. Attitude of Agencies
  - 1. Agencies often decline
  - 2. Sending representative without authority to negotiate

E. Importance of Mediation

1. Freedom to fashion result you can live with
2. Office climate if/when employee returns to work

**IV. COMMON ISSUES**

A. Job Performance and Misconduct

B. Progressive Discipline

C. Evidence limited to allegations in documentation imposing discipline

1. Jones v. State (No. 07-22-III, Davidson Chancery 11/5/07)

D. Termination for good of the service

1. Reece v. Tenn. Civil Service Commission 669 S.W. 2d 808 (Tenn. Ct. App. 1985)
2. Articulate specific reasons: Tenn. Code. Ann. §8-30-326(b)

E. Grievable Issues

**V. DISCRETION OF ALJs AND CIVIL SERVICE COMMISSION**

A. Discipline

1. Tenn. Dept. of Mental Health and Mental Retardation v. Allison 833 S.W. 2d 82 (Tenn. Ct. App. 1992 )
2. State of Tennessee, Dept. of Safety v. Randy J. Elmore (No. 00-2323-III, Davidson Chancery 4/17/01)

B. Back Pay and Attorneys Fees

1. Jones v. State (No. 07-22-III, Davidson Chancery 11/5/07)
2. Qualls v. Camp WL 2198334 (Tenn. Ct. App. 2007)

## **VI. HOW TO PREVENT--HOW TO PREVAIL**

### **A. Job Performance and Misconduct**

1. Document
2. Evaluations

### **B. Performance Evaluations**

1. Important tools in employee relations if used properly
  - a. Improve performance
  - b. Document non-performance
2. Problems from litigation perspective
  - a. Discipline for job performance or pattern of misconduct if not noted in past evaluations
  - b. Solid proof if evaluations document past problem
    1. Proves misconduct or non-performance of duties occurred
    2. Good faith effort to work with employee

### **C. Progressive Discipline**

1. Use if possible--penalty often reduced by ALJ if too harsh
2. Document prior actions
3. Prior discipline
  - a. Cannot be used to prove charge
  - b. Can be used to show employee knowledge of problem
  - c. Justify discipline

[illegible]

[illegible]

## **OVERVIEW OF THE CIVIL SERVICE COMMISSION**

The Civil Service Commission, composed of nine board members, serves as an appeals body for state civil service employees through the state's fifth step grievance procedure. Board members are appointed by the governor for six-year terms. The Commission reviews employee appeals and makes decisions based in the evidence presented at the hearings and examinations of employees' work records. The Department of Personnel coordinates these meetings and the Commissioner of Personnel serves as secretary.

The Commission represent the public interest in the improvement of personnel administration in state service and has jurisdiction to hear civil service appeals in the final step of the grievance procedures for regular employees.

The members must be citizens of the State of Tennessee from the public at large. No member shall be a member of any state or national committee of a political party or shall hold or be a candidate for any paid public office.

An appealing employee must file a written request for a 5th step hearing with the Commission within 30 calendar days from receipt of the appointing authority's (4th step) response. If an appeal is accepted at the 5th step, it is assigned to 2 administrative law judges from the Administrative Procedures Division in the Secretary of State's office who preside over the matter for the Commission.

One administrative law judge serves as a mediation judge and assists the parties in mediating a settlement in the matter. The second judge presides at the formal fifth-step hearing, if one is necessary, and after hearing proof issues an Initial Order which becomes final and binding unless appealed by either party.

The Initial Order can be appealed within 15 days for review by a quorum (3 members) of the Civil Service Commission. The Commission meets quarterly for approximately two (2) to four (4) hours per meeting to review and make decisions on appeals. The Final Order of the Commission can be appealed to Davidson County Chancery Court within 60 days of the date of issuance.

The Commission retains jurisdiction, for purposes of interpretation and enforcement, over a final order until such time as the provisions of the order are carried out and all claims for penalties or interest, or both, are settled.

## **CIVIL SERVICE COMMISSION MEMBERS**

Laura Holland, Chairperson - Murfreesboro

Bruce Bledsoe - Jackson

Barbara Clark - Knoxville

James H. Griggs - Lexington

Ben Rauhuff - Maryville

Carol White - Nashville

Clint O. Williams - Fruitvale

Charlesetta Woodard-Thompson - Chattanooga

## **CIVIL SERVICE COMMISSION KEY STAFF**

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Phone: 615-741-2958

Office Hours: 7:30 a.m. – 4:00 p.m.

## The Tennessee Civil Service Commission

### Maximizing the Appeals Process

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## Big Picture Statistics



- 43,000 State Employees
- # Grievances Filed Annually—  
Not tracked statewide
- Active Level 5 cases as of 1/29/08: 117
  - FY 04-3, FY 05-2, FY 06-9
  - FY 07 -39
  - FY 08 to date: 64
- 120 docketed Level 5 cases in 07
- 15 Appeals to Civil Service Commission in FY 07
- 3 Reversals of the ALJ decision by the Civil Service Commission

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## 1/08 CSC Quarterly Report Analysis

- 117 current cases
- Gender split about 50-50
- Cases by Agency
  - 20-30 cases: Correction, DCS, Safety
  - 12 cases: MHDD, Probations & Parole
  - 7 cases: TDOT
  - 2-3 cases: DHS, Labor, TDEC, TRICOR
  - 1 case: Revenue, MR, Commerce

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## Civil Service Commission: Who?

- 9 volunteer members
- Appointed by Governor
- 6 year terms
- Demographic balance
- Occupational diversity
- In-service training
- Like a jury
- DOHR & Admin Procedures Div support



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## The Appeals Process

- Department reviews; if not resolved, then
- Level 5 hearing with Admin Law Judge
- If either party files an appeal, case goes to the Civil Service Commission
- Commission members prepare to consider it at a quarterly meeting by reviewing:
  - ALJ initial order
  - appeal briefs from both sides
  - hearing transcript

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## What Happens At Meetings



- Open & on the record
- Roll Call for Quorum
- Counsel summarizes first case
- Chair leads discussion
- Chair facilitates vote
- If decision is to reverse ALJ, chair facilitates crafting of decision statement
- Repeat for all cases

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## Appeals Process Goal: Avoid Injustice



Injustice to Employee [-----**JUSTICE**-----] Injustice to Agency & Citizens

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## What Can the Commission Do?

- Uphold
- Reverse
- Revise



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## Factors Affecting Outcomes



- Facts of the case
- Civil Service Rules
- Commission members' understanding of case issues
- Quality of the hearing evidence
- Quality of the appeal briefs

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## Facts & Civil Service System Rules

- Make sure your department supervisors and HR staff clearly understand civil service & discipline rules.
- Assure that bad behavior is documented and addressed.
- Assess your agency's risks and take action to minimize or control.



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## Commission Members' Understanding



- Recognize that all we usually see is paper, no people.
- For credibility judgments, we generally rely on ALJ.
- Write in plain English for non-lawyers.
- Write for people who are not state employees (avoid acronyms).
- Limited by "4 corners of the record."

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## The Hearing Record

- Make your case—with logic and strong evidence
- Refute the other side
- Show patterns, if possible
- Explain context that makes behavior more or less egregious
- Overcome "he said, she said" stalemates



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## Appeal Briefs



- Make your case
- Support assertions with evidence from the record
- Refute the arguments of the opposition
- Provide strong "Findings of Fact" and "Conclusions of Law" that the commission could use in its decision

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## Questions? Myths to Test?



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# GRIEVANCE PROCESS A TO Z: CHANCERY REVIEW AND BEYOND

Presented by:  
Kae Carpenter, Deputy Commissioner/General Counsel  
Department of Human Resources  
March 28, 2008

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## APPEALING AN ORDER

TCA § 4-5-322 (a) & (b)

- A petition for review must be filed in chancery court in Davidson Co.
- A grievant may file directly in chancery court.
- An agency that wishes to appeal must receive approval from the Office of the Attorney General.
- An appeal must be filed within 60 days after the entry of the agency's final order.

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## STAYING THE ORDER

TCA § 4-5-322 (c)

- Filing of a petition does not stay the Civil Service Commission's order.
- To obtain a stay, a party must:
  - File with the Civil Service Commission; if the Commission cannot grant a stay within a reasonable time, the party may request a stay in the chancery court;
  - Give notice of the request to the Office of the Attorney General.

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## IN CHANCERY COURT

TCA § 4-5-322 (f) & (g)

- A party may apply to the court for leave to present additional evidence;
- The court may grant leave to present additional evidence if the party shows to the satisfaction of the court that
  - the additional evidence is material; and
  - there were good reasons for failing to present the evidence in the prior proceeding.

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## REVIEW OF THE ORDER

TCA § 4-5-322 (h)

- The court may affirm the decision of the agency or remand the case for further proceedings.

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## OVERTURNING THE ORDER

TCA § 4-5-322 (h)

- The court may reverse or modify the decision if the order is:
  - In violation of constitutional or statutory provisions;
  - In excess of the statutory authority of the agency;
  - Made upon unlawful procedure;
  - Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
  - Unsupported by evidence that is both substantial and material in the light of the entire record.

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## OVERTURNING THE ORDER

TCA § 4-5-322 (h)(5)(B)

- In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

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## AND BEYOND

TCA § 4-5-323

- An aggrieved party may obtain a review of any final judgment of the chancery court by appeal to the court of appeals of Tennessee.
- The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

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